



TOWN OF WEARE
PLANNING BOARD
ZONING BOARD OF ADJUSTMENT
15 Flanders Memorial Road
P.O. Box 190
Weare, NH 03281
Phone: (603) 529-2250
Fax: (603) 529-4554

Naomi L. Bolton
Land Use Coordinator

Office Hours:
Monday
Tuesday
Thursday
8 AM – 4:30 PM

**ZONING BOARD OF ADJUSTMENT
MINUTES
SEPTEMBER 14, 2004
(Approved as amended 10/5/04)**

PRESENT: Tim Galvin, Chairman; Forrest Esenwine, Vice Chairman; Jack Dearborn; June Purington; Leon Methot; Matt Pelletier, Alternate; Naomi Bolton, Land Use Coordinator.

GUESTS: LeRoy Marcroft; Daniel L. Farrell; Denise Farrell; Ginger Esenwine; Marion Jankauskas; Ron Nippe; Emily Hicks; Danny Hicks; Frank Piacentini; Tim Avery; Michael Owen; Laura Brooks; Robert Todd; Joseph F. Nelson; Robert Nelson

I. CALL TO ORDER:

Chairman Tim Galvin called this meeting to order at 7:30 PM at the Weare Town Office Building. Chairman Galvin explained the process by which the board conducts business. The board members also introduced themselves.

LETTER FROM SAWYER ROAD RESIDENTS: The board agreed that a letter of acknowledgement should be sent back to the residents simply informing them that the letter has been turned over to the BOS and the Public Works Director, who have been handling this. Chairman Galvin offered to draft a letter and get it to Naomi to mail to the residents.

MUNICIPAL LAW LECTURE SERIES: NHMA offers an annual fall law lecture series that consists of three meetings from 7-9 PM in Manchester at the PSNH building on October 13, October 20 and October 27. Anyone interested in going to these meetings should submit the forms back to Naomi ASAP so that one check can be made.

BUDGETING PROCESS: Chairman Galvin informed those present that Town Administrator Bob Christensen started a series of budget summit meetings back in June and has been having ongoing meeting on a monthly basis. The last set of series will be held Thursday, September 16th from 7-8:30 PM at the Town Office Conference Room and Monday, September 27th from 6:30-8 PM at the Christ Community Church Auditorium. The public is encouraged to attend.

II. PUBLIC HEARINGS:

Case #1904 G2003B Realty, LLC (Continued Hearing)
Special Exception, Article 30-A.3 & 30-A.3.1.2
Applicant is requesting that lot 408-047.4 become lots 47.1, 47.2,
47.4, 47.5 and 47.6 as previously approved by the Planning Board
and to build homes as allowed.
Tax Map 408-047.004 Mt. Dear born Road

Chairman Galvin informed those present that the applicant called the Land Use Office yesterday and requested a continuance to next month, as he has to be out of Town. Chairman Galvin moved to continue this hearing to October 5, 2004, Forrest Esenwine seconded the motion, unanimous vote in favor (Methot, Purington, Dearborn, Galvin, and Esenwine).

Case #2004 Robert Todd (Owner: Wolf Cota)
Variance, Article 18, Section 18.2.5
Applicant is requesting permission to permit the placement of a
leaching area component of a septic system within 50 feet of
surface water.
Tax Map 110-087 75 Daniels Lake Road
(Private)

Robert Todd was present on behalf of the applicant per article 18.2.5 of the zoning ordinance, which requires 75 feet from surface water. They are looking to permit placement of a leaching area component of a septic system within 50 feet of surface water. Mr. Todd gave the board an overview as to the location of the property; an overview of what currently exists on the property; and a detailed explanation of the type of septic system that they are looking to install on this lot. Mr. Todd stated that they will also be looking for a waiver from NHDES because they are right on the 125 feet well radius as well as locating the system right on the property line. Mr. Todd then went through the five points of hardship as follows:

1. That there **will not** be a diminution of value surrounding properties as a result of the granting of this variance because: (a) the owner will not be creating a nuisance or creating a less attractive appearance property. To the contrary the variance will provide incentive for the present or future owners, to improve the appearance of the property. (b) The use of the property will continue in harmony with the use of all surrounding properties. Properly installed and maintained septic systems are usually not considered a detriment to surrounding property values, whereas, failing septic systems can be.
2. The granting of the variance **will not** be contrary to public interest because: The primary resource of public interest at this site is water quality in Daniels Lake. Conventional septic systems provide insufficient treatment and removal of phosphorous, nitrogen, and microorganisms, from groundwater in soils with rapidly permeable structure and texture, as is the soil on the subject lot. The zoning requirement appropriately

provides measures to mitigate this problem. Accordingly, the owner proposes to use technology that provides more complete treatment of effluent than conventional systems and proposes to place the system on the lot as far from the lake and existing wells as possible.

3. That enforcement of the zoning ordinance will create an unnecessary hardship in that the zoning restriction:
 - aa. An area variance is needed to enable the applicants proposed use of the property given the special conditions of the property because: The applicant wishes to construct a septic system on his property and the leaching area can not be placed on the lot so as to comply with the required minimum setback distance (75') from a wetland situated northerly of the property.
 - bb. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance because: The applicant has used the best available septic treatment and disposal technology to minimize the non-conformity relative to its placement on the lot. However, the applicant has no option available to him that would result in total compliance with respect to the separation distance between the leaching area and the existing wetland north of the proposed leaching area.
4. That through the granting of relief by variance substantial justice will be done because: (1) for reasons stated above, protection of water quality is afforded by the subject proposal as well as if the setback were met. Therefore, there is no gain to the public in denial of the request. (2) Without the variance the owner will be faced with the prospect of continuing the use of the existing seepage pit serving the house, such use may put surrounding wells at risk this would be an injustice to abutters.
5. That the use contemplated by the owner as a result of obtaining the variance will not be contrary to the spirit and intent of the ordinance because: (1) The owner has prepared a design of his septic system that complies with the zoning ordinance to the extent it is physically possible to do so. The proposed system is moved to the extreme northeasterly corner of the property where the setting is most environmentally innocuous. (2) Further, the owner has chosen a septic disposal system that is more effective than conventional septic systems in removing nitrates, phosphorous and pathogens from the effluent. The system has the trade name "The Clean Solution" and it is designed to function in the same manner as a municipal treatment system only in miniature.

Basically, large populations of bacteria attach themselves to media in a tank similar to a septic tank and a continuous source of air is forced through the tank to encourage the organisms to multiply and use the solids in the effluent as an energy source. The effluent is circulated through the tank numerous times until all solids in the effluent have been consumed.

The clear liquid is then pumped to the infiltration system where it enters the groundwater flow.

The bacterial growth process in the tank converts the carbonaceous solids in the effluent to carbon dioxide, water and sludge. The urea and ammonia is converted to nitrates and sludge. The sludge accumulates in the tank for a periodic removal and the clear water is dispersed to the soil. Generally, this system produces a high degree of nitrification. Conventional septic tank leach field systems release more nitrates, which are harmful to humans, than the "Clean Solution". Up to 25% reduction of phosphorous is possible with the proposed system so that lake eutrophication attributable to this lot will be minimized. Fecal coli form bacteria reduction is about 2 orders of magnitude lower from this system than effluent from a conventional septic tank-leach field system.

Finally, "The Clean Solution" system must be maintained under agreement with a qualified contractor. A maintenance agreement is a condition of approval by the NH Department of Environmental Services. Environmentally safe operation and function is assured with this technology in contrast to the "install it and forget it" paradigm likely playing out regarding all the neighboring conventional septic systems on the lake.

Approving Abutters: NONE

Disapproving Abutters: Joseph Nelson, 83 Daniels Road, abutter and resident during the summer months. Mr. Nelson stated that he has been on Daniels Lake since 1962. The original owner of this property had to have an incinerator toilet. Mr. Nelson further stated that "this place is a junk yard and it is a disgrace". According to Mr. Nelson this property has been vacant for over 25 years.

Daryn Turner, 73 Daniels Road, abutter stated that this is only a 2 bedroom cottage, not a 3 bedroom house. Mr. Turner added that he has been there for 17 years and the property has been vacant for as long as he has been there. Mr. Turner is extremely concerned with the watershed that could be damaged. Mr. Turner felt that this request is stretching the ability to the limit, which is a concern. This type of system requires periodic removal, but who is going to stay on top of Mr. Gould to make sure it gets done. This is another concern.

Ron Nippe, 71 Daniels Road, abutter expressed a concern with runoff from a culvert that floods his basement. He has 2 sump pumps in the utility room to keep water from getting into his property. Mr. Nippe stated that he would be interested in talking with the owner about swapping land which would be moving the situation further back keeping the system away from the lake. Mr. Nippe explained that he has tried to discuss this with Mr. Gould but he won't talk to him.

Dan Farrell, 77 Daniels Road, his property is down hill from the property. His well and septic system are down from this property. Mr. Farrell also has flood problems when it rains heavily. Mr. Farrell stated that he is concerned with being downhill from the proposed system. His larger concern with that is that without any way of making the owner do the periodic removal, when it fails it is all coming downhill towards him. Another concern that Mr. Farrell has is that this property is uninhabited and an eyesore.

Denise Farrell, 77 Daniels Road, also has a concern of who will maintain the type of system that he is requesting. Mrs. Farrell also stated that the building that is currently on the property is not habitable nor has it been lived in for several years.

Public At Large: Bob Nelson, resident concern with what was discussed here about this applicant having a high regard for the neighborhood. If he has such a high regard he would have cleaned up the property instead of making it an eyesore. Mr. Nelson pointed the board to article 3.4.2 of the zoning ordinance that discusses abandonment. This property has been vacant for much longer than 2 years and in order to resume the non-conforming use he must obtain a special exception. Mr. Nelson also echoed many of the neighbor's complaints about the Town making sure that the periodic removal happens if it is approved. If the applicant or future owner decides not to follow through on the removal periodically, it will be flowing downhill right into Daniels Lake, which should be a Town concern.

Other Boards: NONE

Rebuttal of Applicant: Mr. Todd rebutted concerns that have been raised by the abutters, which some are not erroneous some has some merit. Mr. Todd responded to the property being empty, Mr. Cota informed Mr. Todd that the property has been rented in the past. Mr. Todd did some research on abandonment and it would appear in his opinion that Mr. Cota doesn't have an abandon property.

Forrest Esenwine asked Mr. Todd how one will be assured that the system will be maintained. Mr. Todd explained that there are no guarantees in life. Mr. Todd knows the gentleman that designs the system and he stands beside the installation. The installer is a third party involved with this process with an interest in his particular product, which should help put.

Being there were no further comments or questions, Chairman Galvin closed this hearing at 9:06 PM.

CASE DECISION-CASE #2004:

Chairman Galvin stated that he felt the most striking item tonight was made by Ron Nippe, which goes to the reasonable alternative of some kind of transfer between both parties to move the tank further away from the surface water, which to me is a common sense approach.

Jack Dearborn and Forrest Esenwine stated that this board is not here to negotiate with the applicant and an abutter. They both felt it wasn't in this board's jurisdiction.

Point #1: Leon Methot moved to accept point #1, Forrest Esenwine seconded the motion. Discussion: Forrest Esenwine stated that the response about creating a less attractive appearance, from tonight's testimony it can't get any worse. The point may be valid but untrue. Vote: 4 in favor (Methot, Purington, Dearborn, and Esenwine) and 1 opposed (Galvin).

Point #2: Leon Methot moved to accept point #2, Forrest Esenwine seconded the motion. Discussion: June Purington stated that a comment was made that this system is better than a conventional system, so the variance is for a system regardless, so if the variance fails he could use the existing system. Vote: 4 in favor (Methot, Purington, Dearborn, and Esenwine) and 1 opposed (Galvin). Chairman Galvin stated that he is not convinced that there is enough to safeguard the surrounding the watershed. The public interest is not really being protected.

Point #3aa: Leon Methot moved to accept point #3aa; Chairman Galvin seconded the motion, unanimous vote in favor (Methot, Purington, Dearborn, Galvin, and Esenwine).

Point #3bb: Leon Methot moved to accept point #3bb, Chairman Galvin seconded the motion: Discussion: Chairman Galvin stated that he still would reverted back to his previous discussion about an alternative that could be reasonable. Vote: 4 in favor (Methot, Purington, Dearborn, and Esenwine) and 1 opposed (Galvin).

Point #4: June Purington moved to accept point #4; Chairman Galvin seconded the motion, unanimous vote in favor (Methot, Purington, Dearborn, Galvin, and Esenwine).

Point #5: Forrest Esenwine moved to accept point #5, June Purington seconded the motion. Discussion: none. Vote: 4 in favor (Methot, Purington, Dearborn, and Esenwine) and 1 opposed (Galvin).

Leon Methot moved to grant the variance for Case #2004 as submitted with the condition that the type of system presented, Clean Design be approved by the State of NH and installed in the location shown on the map presented and discussed as Plan #9537, dated 6-15-04, Forrest Esenwine seconded the motion, unanimous vote in favor (Methot, Purington, Dearborn, Galvin, Esenwine).

Case #2104 Kenneth Desjardins Bldrs, LLC (Owner: Robert Covino)
Administrative Appeal, CEO decision of 7/21/04
Applicant is requesting permission to obtain a building permit on
an existing lot.
Tax Map 402-067.002 Woodridge Lane

A written request to withdraw this application has been received from Attorney Uchida.

Case #2304 Marion Jankauskas
Variance, Article 18, Section 18.2.2
Applicant is requesting permission to build a breezeway and
garage into the setback.
Tax Map 411-138 10 Apple Way

Marian Jankauskas was present to explain that she is here for a variance for a breezeway and garage to be allowed to be into the setback as the plan done by Mr. Arthur Siciliano shows. Mrs. Jankauskas went through the five points of hardship as follows:

1. That there **will not** be a diminution of value surrounding properties as a result of the granting of this variance because: surrounding properties have similar additions.
2. That the granting of the variance **will not** be contrary to the public interest because: there is not public interest identified or anticipated.
3. That enforcement of the zoning ordinance will create an unnecessary hardship in that the zoning restriction:
 - aa. An area variance is needed to enable the applicants proposed use of the property given the special conditions of the property because: The location of existing home, proposed breezeway and garage is too close to the road. There is a drop off in the back and to the right facing the road.
 - bb. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance because: construction costs to fill the drop off and the area to the right would be astronomical.
4. That through the granting of relief by variance substantial justice will be done because: the construction of the breezeway and garage will enable persons to safely access the road in inclement weather conditions.
5. The use, for which the variance is requested, will not be contrary to the spirit of the ordinance because: The spirit of the ordinance is to allow breezeways and a garage which benefit the property owner(s) access to the road in inclement weather.

Approving Abutters: NONE

Disapproving Abutters: NONE

Public At Large: NONE

Other Boards: NONE

Being there were no further comments or questions, Chairman Galvin closed the public hearing at 9:50 PM.

CASE DECISION – CASE #2304:

Point #1: June Purington moved to accept point #1, Chairman Galvin seconded the motion. Vote: 3 in favor (Purington, Dearborn, and Galvin) and 2 opposed (Methot, Esenwine)

Point #2: Forrest Esenwine moved to accept point #2, June Purington seconded the motion. Vote: 4 in favor (Purington, Dearborn, Galvin, and Esenwine) and 1 opposed (Methot).

Point #3aa: June Purington moved to accept point #3aa, Chairman Galvin seconded the motion. Vote: 3 in favor (Purington, Dearborn, and Galvin) and 2 opposed (Methot, Esenwine).

Point #3bb: Forrest Esenwine moved to accept point #3bb, June Purington seconded the motion. Vote: 3 in favor (Purington, Dearborn, and Galvin) and 2 opposed (Methot, Esenwine).

Point #4: June Purington moved to accept point #4, Chairman Galvin seconded the motion. Vote: 3 in favor (Purington, Dearborn, and Galvin) and 2 opposed (Methot, Esenwine)

Point #5: June Purington moved to accept point #5, Forrest Esenwine seconded the motion. Vote: 3 in favor (Purington, Dearborn, and Galvin) and 2 opposed (Methot, Esenwine).

Jack Dearborn moved to approve the variance for Case #2304 with the condition that the garage be no closer than 20 feet from the front property line, June Purington seconded the motion. Discussion: Mr. Dearborn stated that the applicant would have to reengineer her house to accommodate this proposal. Vote: 3 in favor (Purington, Dearborn, and Galvin) and 2 opposed (Methot, Esenwine), motion carries.

Jack Dearborn removed himself from the board. Chairman Galvin appointed Matt Pelletier to sit in Jack's place.

Case #2204 Christ Community Church (Pastor Tim Avery)
Special Exception, Article 19, Section 19.1.9
Variance, Article 17, Section 17.2.1
Applicant is requesting permission to use the property as a private
educational facility.
Tax Map 411-123 727 South Stark Highway

Pastor Tim Avery was present and stated that it is the desire of the Christ Community Church to open a small elementary school (to be called Weare Christian Academy) providing education for Kindergarten up to 6th grade within the existing space of the building. The school program will offer 5 days of education following a calendar and hours patterned after the local public school system. The school will be approved by the State of New Hampshire for educational purposes. While the school will have a Christian based philosophy it will admit students of any race, color, national or ethnic origin to all rights, privileges, programs, and activities. Membership with or affiliation to Christ Community Church will not in any way be a factor in admission to the school program. Christ Community Church will continue to function and use the property as it has. Mr. Avery then went through the seven conditions required for a special exception as follows:

1. The specific site is an appropriate location of such a use or uses in terms of overall community development: The specific site is appropriate in that it is already functioning as a church and would only be adding one more service to provide the community. It is readily accessible to those utilizing the services of that would be offered. It has ample space to support the use proposed.
2. The proposed use will not adversely affect the neighborhood and shall not produce significant reduction of real estate values in the neighboring area: Surrounding property values will in fact be enhanced. The presence of an educational alternative is a significantly attractive factor in the choice of real estate when moving into the area.
3. The proposed use will not be a nuisance or serious hazard to vehicular traffic or pedestrians: There will be no more traffic nor will there be any change to traffic compared to what already exists on a Sunday morning.
4. The proposed use will not cause any undue burden on the Town through the provision of basic Town services: Basic Town services will be unimpacted by the proposed Special Exception.
5. Adequate off-street parking will be provided if determined necessary by the Zoning Board of Adjustment: Existing parking already supports more spaces to meet the needs of Sunday mornings than would be needed for a school functioning Monday through Friday.
6. A buffer may be required to screen neighboring uses from the proposed use. Buffers may be fence, screens, dense planting of suitable trees and shrubbery, or naturally occurring shrubs and trees: Buffering of dense trees and plants already exists on both sides of the lot but additional buffer will be provided if determined necessary.
7. The Zoning Board of Adjustment, in granting any special exception, may include such restrictions or conditions to insure compliance with this section: Okay (?) It is unclear what information is desired here.

Approving Abutters: NONE

Disapproving Abutters: Danny Hicks, 726 South Stark Highway, abutter directly across the street is concerned with property value if blinking light has to be added because of the daily traffic. Mr. Hicks had a concern with the hours of the school and inquired about any after school activity. Another concern he has is getting in and out of his property, where he is directly across the street. Again, he stated that he is seriously concerned with property value. Noise of the place was another concern. The existing buffers on either side are fine and there is no noise buffer in the front, which his house is extremely close to the highway. The number of students will be a concern in the future as far as facility improvements. The headlights come directly into his living room five nights instead of just one night. Again he stated that his biggest issue would be the real estate value.

Frank Piacentini, 31 Apple Way, concerned that this could be leading to something bigger, possibly another building in the future. Mr. Piacentini stated

that he is not sure how big this can grow, up to 100 students or so. If it stays small and can stay within the existing building he didn't have an issue with it.

Public At Large: Emily Hicks, 726 South Stark Highway, abutter, echoed her fathers concerns. Ms. Hicks informed the board of an incident that happened during vacation bible school. The children were playing and yelling on the front lawn, which you could hear across the street causing her to not be allowed to stay outside without causing a migraine. She stated that she is not in favor of the school proposal.

Other Boards: NONE

Rebuttal of applicant: Pastor Avery stated that he doesn't anticipate being anywhere near 100 students. As far as the extra curricular activities go, there is no funding to do these activities. Mr. Avery apologized to the neighbors about the comments about vacation bible school and offered to speak with them about it. He was unaware of any problems. He stated that 50 students would be the max for the current facility without further renovations. June Purington asked if the regulations and guidelines would be the same as the public schools. Mr. Avery responded, yes somewhat higher.

Being there were no further questions or comments, Chairman Galvin closed the public hearing at 10:30 PM.

CASE DECISIONS – CASE #2204:

Point #1: Leon Methot moved to accept point #1, June Purington seconded the motion. Vote: Unanimous vote in favor (Methot, Purington, Pelletier, Galvin, Esenwine).

Point #2: June Purington moved to accept point #2, Chairman Galvin seconded the motion. Discussion: Forrest Esenwine state that he didn't think that it was proved either way that it would affect the neighborhood and property values. June Purington pointed out that it would be enhanced if that was the school your children went to. Vote: 4 in favor (Methot, Purington, Pelletier, and Galvin) and 1 opposed (Esenwine).

Point #3: Leon Methot moved to accept point #3, Chairman Galvin seconded the motion. Discussion: Forrest Esenwine and Chairman Galvin echoed the traffic issue especially in light of the issue of being cross traffic with coming and going vehicles. Vote: 2 in favor (Methot, Purington) and 3 opposed (Pelletier, Galvin, Esenwine).

Point #4: Forrest Esenwine moved to accept point #4, June Purington seconded the motion. Discussion: none. Vote: Unanimous vote in favor (Methot, Purington, Pelletier, Galvin, Esenwine).

Point #5: Chairman Galvin moved to accept point #5, Leon Methot seconded the motion. Discussion: none. Vote: Unanimous vote in favor (Methot, Purington, Pelletier, Galvin, Esenwine).

Point #6: June Purington moved to accept point #6, Chairman Galvin seconded the motion. Discussion: Chairman Galvin was curious if there is room enough to place a small size shrub buffer in the front of the property to help the concern

across the street. Vote: Unanimous vote in favor (Methot, Purington, Pelletier, Galvin, Esenwine).

Leon Methot suggested that the board could do a couple of things, first is to require that a traffic study be done and the board will defer an answer until that has been done or the application can be denied and the basis of their appeal would be strictly to do with a traffic study.

Forrest Esenwine moved to grant the special exception on Case #2204 as requested, Leon Methot seconded the motion. Vote: 3 in favor (Methot, Purington, and Pelletier) and 2 opposed (Galvin, Esenwine).

Leon Methot moved to reconsider the previous vote; Forrest Esenwine seconded the motion, unanimous vote in favor (Methot, Purington, Pelletier, Galvin, and Esenwine).

Forrest Esenwine moved to grant the special exception on Case #2204, Chairman Galvin seconded the motion. Vote: 1 in favor (Methot), 3 opposed (Pelletier, Galvin, Esenwine) and 1 abstention (Purington). The reason for not granting the special exception is that not all the points were met, particular condition number three (3) that has to do with traffic or vehicular impacts.

III. MINUTES:

JUNE 3, 2004 MINUTES: Forrest Esenwine moved to approve the June 3, 2004 minutes as amended, Chairman Galvin seconded the motion, all in favor.

IV. ADJOURNMENT:

As there was no further business to come before the board, Leon Methot moved to adjourn at 11:00 PM, June Purington seconded the motion, all in favor.

Respectfully submitted,

Naomi L. Bolton
Land Use Coordinator